



BERLIN POLICE DEPARTMENT

RELEASE AND INDEMNITY AGREEMENT FITNESS ASSESSMENT

This Release and Indemnity Agreement (the "Agreement") is made this ___ day of _____, 20___, by and between the City of Berlin, NH and the Berlin Police Department (collectively, the "City") and the undersigned participant ("Participant") (collectively, the "Parties").

RECITALS

City requires police officer applicants to participate in a fitness assessment test (the "Fitness Assessment") as part of the enrollment process into the police academy.

Participant desires to participate in the Fitness Assessment; and

City desires to allow Participant to participate in the Fitness Assessment.

In consideration of the mutual covenants contained herein and the agreement of City to allow Participant to participate in the Fitness Assessment, the Parties hereby agree as follows:

I. Release

Participant hereby waives Participant's right to recover from City, its officers, employees, agents, and representatives, and their successors and assigns ("City's Agents"), and forever releases and discharges City and City's Agents from any and all damages, losses, liabilities, losses, penalties, fines, liens, judgments, rights, claims, causes of action, costs or expenses whatsoever, including, without limitation, attorneys' fees and costs, whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with the Fitness Assessment, except as caused by the misconduct of City.

II. Indemnification

1. Participant hereby agrees to indemnify, defend, and hold City and City's Agents harmless from any claims, including, without limitation, claims for personal injury (including death) or real or personal property damage, actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including sums paid in settlement of claims), interest or losses, including attorneys' fees (including any fees and expenses incurred in enforcing this indemnity), consultant fees, and expert fees that arise directly or indirectly from or in connection with the Fitness Assessment.

2. No provision of this indemnity shall be waived or released except by the express written statement by the party against whom such waiver would be asserted. Except where specifically referring by name to this indemnity or any provision therein, no written waiver or release between the parties, whether contained in this Agreement or otherwise, shall affect the liabilities and responsibilities under this indemnity, or the rights of the parties' assigns and insurers to seek enforcement or compensation therefor.

Fitness Assessment Requirements

MALES				FEMALES			
Age	1 1/2 Mile Run	Sit-Ups	Push-Ups	1 1/2 Mile Run	Sit-Ups	Push-Ups	
						Modified	Full Body
18-29	12:53	37	27	15:32	31	22	14
30-39	13:25	33	21	16:43	24	17	10
40-49	14:10	28	16	17:38	19	11	8
50-59	15:53	22	11	19:43	12	10	--
60+	17:49	18	9	22:03	5	4	--

III. Assumption of Risk

Participant understands it is Participant’s responsibility to consult with a physician prior to and regarding Participant’s participation in the Fitness Assessment. Participant acknowledges on Participant’s behalf and on behalf of Participant’s agents, executors, administrators, successors and assigns (“Participant’s Agents”) that the Fitness Assessment may expose Participant and Participant’s Agents to certain risks, and that injuries or other harm could occur to Participant, Participant’s Agents, and third parties. Such injuries may include, but not limited to, heart attacks, muscle strains, muscle pulls, muscle tears, broken bones, shin splints, heat prostrations, injuries to knees, injuries to back, injuries to foot, or any other illness or soreness, including death. Participant is voluntarily requesting the Fitness Assessment with knowledge of the risks, hazards, and other dangers involved. Participant hereby accepts any and all risks of injury to Participant and Participant’s Agents arising out of or in any way connected with the Fitness Assessment.

IV. Covenant Not to Sue

Participant agrees not to file any suit or claim against the City for any claim arising out of the Fitness Assessment. If Participant violates this covenant not to sue, the Parties agree to hereby forever assign and relinquish any and all claims, damages, and rights to relief that Participant has against City to the City, to be exercised for the City’s benefit and at the City’s discretion.

V. Miscellaneous

Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire.

Partial Invalidity. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

Assignment. This Agreement or any right hereunder shall not be assigned by either party without the written consent of the other party.

Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

Titles and Headings. Titles and headings to sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

Entire Agreement, Amendments and Waivers. This Agreement contains the entire understanding of the Parties hereto with regard to the subject matter contained herein. The Parties hereto acknowledge that neither party makes any representations or warranties except for those representations and warranties specifically provided herein. The Parties hereto, by mutual agreement in writing, may amend, modify and supplement this Agreement. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

The Parties hereby execute this Release and Indemnity Agreement as of the date first above written.

**City of Berlin, NH
By the Berlin Police Department**

_____ By: _____
Witness Daniel Buteau, Chief of Police

Participant

_____ _____
Witness Print Name: _____
Date of Birth: _____
Phone Number: _____

Emergency Contact Name and Phone Number: _____